

**STATE OF FLORIDA  
DEPARTMENT OF HEALTH**

**DEPARTMENT OF HEALTH,**

**PETITIONER,**

**v.**

**CASE NUMBER 2017-14390**

**BERTO LOPEZ, M.D.,**

**RESPONDENT.**

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**ADMINISTRATIVE COMPLAINT**

Petitioner Department of Health hereby files this Administrative Complaint before the Board of Medicine against Respondent Berto Lopez, M.D., and alleges:

1. Petitioner is the state agency charged with regulating the practice of medicine pursuant to Section 20.43, Florida Statutes; Chapter 456, Florida Statutes; and Chapter 458, Florida Statutes.

2. At all times material to this Complaint, Respondent was a licensed physician within the State of Florida, having been issued license number ME 50399.

3. Respondent's address of record is 1501 Presidential Way, Suite 21, West Palm Beach, Florida 33401.

4. On or about July 25, 2017, at approximately 8:03 p.m., Respondent delivered the baby of Patient O.C., a 40-year-old female, after a scheduled induction.

5. During the delivery, Patient O.C. suffered a cervical laceration, from which she lost more than 500 mL of blood. Respondent attempted to repair the laceration at the patient's bedside. However, Patient O.C. continued to have gushes of blood from the laceration.

6. Respondent ordered a stat CBC on Patient O.C. at approximately 9:15 p.m. Patient O.C.'s hemoglobin dropped from 10.3 pre-delivery to 7.3 post-delivery. Respondent did not order any further testing of Patient O.C.'s hemoglobin.

7. In order to treat the bleeding, Respondent proposed performing a hysterectomy. Patient O.C. agreed to the procedure and signed a consent for a "total abdominal hysterectomy."

8. Respondent took Patient O.C. to the operating room at approximately 9:40 p.m. and performed a supracervical hysterectomy, wherein the patient lost an additional estimated 900 mL of blood. During the procedure, blood was noted in the lower uterine segment.

9. During the procedure, Respondent administered four units of packed red blood cells and four units of fresh frozen plasma to Patient O.C. Respondent did not order any further blood products for Patient O.C.

10. Immediately following the surgery, while still in the operating room, blood was observed flowing from the incision in Patient O.C.'s abdomen. This bleeding was brought to Respondent's attention. Respondent declined to re-open the patient and instead ordered the application of pressure dressings to treat the bleeding.

11. Respondent left the hospital at approximately 11:39 p.m. Patient O.C. was transferred to the ICU at approximately 11:42 p.m. Patient O.C. was stabilized after being brought to the ICU; however, her condition rapidly decompensated a few hours later.

12. At approximately 3:00 a.m. on or about July 26, 2017, ICU nurses observed that Patient O.C. had blood gushing from the hysterectomy incision and from her vagina. Shortly thereafter, Patient O.C. experienced cardiac arrest. Hospital staff attempted to resuscitate Patient O.C. for approximately 55 minutes before pronouncing her dead.

13. At all times material to this complaint, the standard of care required Respondent to have done one or more of the following for Patient O.C.:

- a. Perform a total hysterectomy instead of a supracervical hysterectomy, given Patient O.C.'s cervical laceration;
- b. Re-open and explore the patient when she was observed to be actively bleeding from the surgical incision;
- c. Order frequent re-testing of Patient O.C.'s hemoglobin in order to monitor her blood loss;
- d. Administer additional units of blood as needed to replace what the patient had lost; and/or
- e. Remain at the hospital in order to monitor Patient O.C.'s condition.

14. Section 458.331(1)(t), Florida Statutes (2017), provides that committing medical malpractice as defined in Section 456.50, Florida Statutes, constitutes grounds for disciplinary action by the Board of Medicine. The Board shall give great weight to the provisions of Section 766.102, Florida Statutes (2017), when enforcing Section 458.331(1)(t), Florida Statutes (2017). Medical Malpractice is defined in Section 456.50, Florida

Statutes (2017), as the failure to practice medicine in accordance with the level of care, skill, and treatment recognized in general law related to health care licensure. Section 766.102, Florida Statutes (2017), provides that the prevailing professional standard of care for a given health care provider shall be that level of care, skill, and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers.

15. Respondent failed to practice medicine with that level of care, skill and treatment which, in light of all relevant surrounding circumstances, is recognized as acceptable and appropriate by reasonably prudent similar health care providers in violation of Section 458.331(1)(t), Florida Statutes (2017), in the care and treatment of Patient O.C. in one or more of the following ways:

- a. By failing to perform a total hysterectomy instead of a supracervical hysterectomy, given Patient O.C.'s cervical laceration;
- b. By failing to re-open and explore the patient when she was observed to be actively bleeding from the surgical incision;

- c. By failing to order frequent re-testing of Patient O.C.'s hemoglobin in order to monitor her blood loss;
- d. By failing to administer additional units of blood as needed to replace what the patient had lost; and/or
- e. By failing to remain at the hospital in order to monitor Patient O.C.'s condition.

16. Based on the foregoing, Respondent has violated Section 458.331(1)(t), Florida Statutes (2017), by committing medical malpractice.

WHEREFORE, the Petitioner respectfully requests that the Board of Medicine enter an order imposing one or more of the following penalties: permanent revocation or suspension of Respondent's license, restriction of practice, imposition of an administrative fine, issuance of a reprimand, placement of the Respondent on probation, corrective action, refund of fees billed or collected, remedial education and/or any other relief that the Board deems appropriate.

*(Signature appears on next page)*

SIGNED this 2<sup>nd</sup> day of July, 2018.

Celeste Philip, MD, MPH  
Surgeon General and Secretary of Health

*Corynn Alberto*

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DEPARTMENT OF HEALTH  
DEPUTY CLERK  
CLERK Amber Greene  
DATE JUL 02 2018

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PCP Date: June 29, 2018

PCP Members: Georges El-Bahri, M.D.; Gary Dolin, M.D.

## **NOTICE OF RIGHTS**

**Respondent has the right to request a hearing to be conducted in accordance with Section 120.569 and 120.57, Florida Statutes, to be represented by counsel or other qualified representative, to present evidence and argument, to call and cross-examine witnesses and to have subpoena and subpoena duces tecum issued on his or her behalf if a hearing is requested. A request or petition for an administrative hearing must be in writing and must be received by the Department within 21 days from the day Respondent received the Administrative Complaint, pursuant to Rule 28-106.111(2), Florida Administrative Code. If Respondent fails to request a hearing within 21 days of receipt of this Administrative Complaint, Respondent waives the right to request a hearing on the facts alleged in this Administrative Complaint pursuant to Rule 28-106.111(4), Florida Administrative Code. Any request for an administrative proceeding to challenge or contest the material facts or charges contained in the Administrative Complaint must conform to Rule 28-106.2015(5), Florida Administrative Code.**

**Please be advised that mediation under Section 120.573, Florida Statutes, is not available for administrative disputes involving this agency action.**

## **NOTICE REGARDING ASSESSMENT OF COSTS**

**Respondent is placed on notice that Petitioner has incurred costs related to the investigation and prosecution of this matter. Pursuant to Section 456.072(4), Florida Statutes, the Board shall assess costs related to the investigation and prosecution of a disciplinary matter, which may include attorney hours and costs, on the Respondent in addition any other discipline imposed.**